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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 90-316-W - ORDER NO. 90-1011

OCTOBER 29, 1990

IN RE: Application of AAA Utilities, Inc.) ORDER APPROVING
 requesting approval of the transfer) TRANSFER AND
 of Perry Water System, Saluda County) RATES AND CLOSING
 to AAA Utilities, Inc., and for) DOCKET 89-482-W
 approval of rates and charges.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on April 2, 1990, by AAA Utilities, Inc. (the Company or AAA) requesting approval of the transfer of the Perry Water System (the System), presently owned by Mr. James Perry, which provides water service to customers in Saluda County, South Carolina, to AAA Utilities, Inc. and for the establishment of rates and charges. The Application was filed pursuant to S.C. Code Ann., Sec., 58-5-240 (Cum. Supp. 1989), and the Commission's Rules of Practice and Procedure.

Prior to the filing of the instant Application, on September 1, 1989, James Perry filed an Application with the Commission petitioning for approval to dispose of the System. That Application, Commission Docket No. 89-482-W, was duly noticed to the public and a Petition to Intervene was filed on behalf of Steven Hamm, the Consumer Advocate for the State of South Carolina (the Consumer Advocate). A public hearing relative to the matters asserted in the Application was held in the Hearing Room of the Commission at 111 Doctors Circle at 11:00 a.m., on Tuesday,

February 20, 1990, before the Commissioners, with Chairman Caroline H. Maass, presiding. Mr. James Perry appeared on behalf of Perry Water System, the Applicant therein; Natalie J. Moore, Esquire, and Elliott Elam, Esquire, appeared on behalf of the Consumer Advocate; and Marsha A. Ward, General Counsel, appeared for the Commission Staff.

Testimony was presented by Mr. Perry on behalf of Perry Water System; Valerie A. Betterton, Environmental Quality Manager, South Carolina Department of Health and Environmental Control (DHEC) and Reginald E. Massey, Manager of Water and Recreational Programs, District Office, DHEC, testified on behalf of the Commission Staff. Two Hearing Exhibits were admitted into evidence as a part of the testimony of witnesses Betterton and Massey. Several homeowners in attendance expressed concern over what they would do for water service should the System be abandoned.

The Commission had this matter under consideration when the instant Application was filed requesting that this Commission allow the Perry Water System to be transferred to AAA Utilities, Inc. The Application was duly noticed to the public and a Petition to Intervene was filed on behalf of the Consumer Advocate. A public hearing relative to the matters asserted in this Application was held in the Hearing Room of the Commission at 111 Doctors Circle at 2:30 p.m., on Wednesday, September 5, 1990, before the Commissioners, with Chairman Marjorie Amos-Frazier presiding. Mr. Joseph E. Swearingen, Sr., President, appeared on behalf of the Company; Carl F. McIntosh, Esquire, appeared on behalf of the Consumer Advocate; and Marsha A. Ward, General Counsel, appeared on behalf of the Commission Staff.

The Company presented the testimony of Mr. Swearingen and Mr.

James Perry. The Consumer Advocate and the Commission Staff presented no witnesses. One Protestant, Mrs. Anita Todd, testified.

The record in this case, along with the record in Docket 89-482-W of which the Commission takes judicial notice, establishes and the Commission makes the following findings of fact and conclusions of law:

1. The System, presently owned and operated by Mr. James Perry, Mr. Don Perry, and Mrs. Mildred Amick, was inherited by the Perrys upon the death of their father. Neither the System nor its rates charged have ever been approved by the Commission and the required performance bond is not on file with the Commission. It serves the residents of the C.W. Perry Development in Saluda County, South Carolina, consisting of approximately 35 full and part-time residents. Residents pay \$80 per year for water service for their household use only. They are not allowed to water lawns, wash cars, etc. This rate, which was put into effect in 1983, is not based on metered usage and does not include a basic facilities charge. Mr. Perry testified that this rate does not financially support the System at this time and, that with the upgrades to the system required by DHEC, he would not be able to continue his ownership and operation of the company.

2. The System consists of two wells, two 400-gallon water storage tanks, and at least one mile of water distribution lines which serve approximately 35 taps in the Perry Development at Lake Murray. According to documents received into evidence at the hearing relative to Docket No. 89-482-W, of which the Commission takes judicial notice, though DHEC has been aware of the System since 1973, it has never been permitted by DHEC. On June 19, 1981, it was granted provisional approval to operate conditioned on its

meeting all applicable water quality requirements.

3. That conditional approval was withdrawn on June 15, 1987, after a DHEC sanitary survey noted at least 15 deficiencies in the System.

4. By the terms of DHEC Administrative Order No. 89-05-WS, issued on January 23, 1989, the owners of the System are required to correct the following deficiencies:

- a. The concrete pad around the well with the small tank is cracked and has become separated from the well casing;
- b. The well houses do not have locking devices;
- c. Check valve at Well #1 does not function;
- d. The above-ground plumbing at each well is not protected from freezing;
- e. There are no flow measuring devices at either well;
- f. Storage tank valves and pump controls are not secured to prevent access by unauthorized persons;
- g. The combined storage capacity is below present design standards;
- h. Minimum pressure of 25 psi is not being maintained in the well #2 service area;
- i. Valves are not tested annually and repaired as necessary;
- j. Valved blowoffs for flushing purposes are not provided on dead end lines 200 feet or longer;
- k. Leaks have not been repaired within a reasonable amount of time after discovery;
- l. No map of the distribution system indicating line size; valve locations, etc. is available; and

m. Electrical wiring is not in conduit.

5. In addition, after the change in the Safe Drinking Water Act in 1978, the System began to experience water quality problems. Bacteriological monitoring data has shown intermittent violations of the bacteriological maximum contaminant level, most recently in June 1988.

6. DHEC has also documented pressure problems on the System as well as evidence of leakage. The System experiences low pressure to almost no pressure. Because of this low pressure, any water source connected to this system could be back-siphoned and could result in serious health related problems to the customers drinking this water.

7. Reginald Massey, who has been employed by DHEC since 1972, testified at the hearing on Docket No. 89-482-W, as follows:

It appears that neither of the wells are [sic] operating under optimum conditions, and it is recommended that a reputable pump service evaluate the system to determine what improvements can be made to existing equipment. The water system does not conform with current design standards. Additional pump yield and/or storage capacity as well as larger distribution line sizes are required in order to obtain approval from DHEC for the operation of the water system. It is necessary that any improvements to the system be designed by a registered professional engineer in this state and the plans and specifications should be submitted to the Plan Review Section of the Water Supply Division for a construction permit. DHEC recognizes that these recommended improvements are substantial and will probably be costly (emphasis added) but are necessary for the continued operation of the system.

8. The lots in the Perry Development are small and utilize septic tanks for sewage disposal. Mr. Perry, along with Mrs. Anita Todd, testified that the size of most of the lots, considering the fact that the lots also bear septic tanks, precludes the homeowners from legally installing wells. Most homeowners will be without a source of water if the System is abandoned or shut down.

9. Witness Swearingen testified that AAA was willing to receive the System from the Perrys to own, operate and maintain providing AAA was able to receive adequate assurance from DHEC that it would be given sufficient time to make the necessary repairs and improvements to upgrade the system to meet DHEC requirements.

10. Mr. Swearingen now owns and operates AAA, a utility serving approximately 200 customers. It has nine metered systems, two at Red Bank, one at Lake Elizabeth, one at Hilton Head, two in Ballentine, and three near the Twin Bridges Community. AAA customers pay a basic facilities charge of \$6.00 to \$7.00 per month and an additional \$1.75 per thousand gallons used. These AAA systems generate approximately \$24,000 a year; however, Mr. Swearingen is the only employee and receives no salary from AAA. He testified that AAA operates in compliance with DHEC but that it makes no profit at this time.

11. Neither Mrs. Todd nor the Consumer Advocate contested the fitness of the Company to own, operate and maintain the system should it be transferred. The Commission takes note of the fact that AAA Utilities, Inc. has been certified by this Commission to provide service to several communities in this State. The Company has made an effort to maintain adequate service and respond to the needs of its customers and its regulating agencies. Accordingly, the Commission finds that AAA is qualified to accept the transfer of the Perry Water System. Further, after consideration of the fact that should the System cease to operate, the homeowners in that area would be without an acceptable alternative, we find the transfer to be in the public interest. The said transfer is therefore approved.

12. Mr. Swearingen testified that AAA proposes to charge the

Perry System customers a flat rate of \$25.00 per month on a yearly basis for unlimited usage and a Reconnect Fee of \$150.00. Though System customers presently pay only \$80.00 per year for water service, those rates relate to service provided absent compliance with DHEC regulations and orders and subject to the low pressure and other service problems experienced by the customers. Mr. James Perry, the present owner, testified that even unregulated he was unable to run the system properly at the \$80.00 per year rate.

13. Mr. Swearingen stated that the \$25.00 monthly fee was proposed in order to allow the Company to collect sufficient funds over a five year period to allow it to make the DHEC required improvements and to properly run the system in the interim. He stated that he had been informed by Mr. Massey and Mr. Perry that the costs of the improvements would be approximately \$35,000. He testified that he had been in the water business for some time and made his own estimate of the cost of the upgrade based on his own knowledge of the industry and his evaluation of what would be necessary to make those improvements. He cited his knowledge of the costs incurred to run a water line, the cost of meters, pump tests, laboratory work, new tanks etc. In his opinion the \$35,000 figure would be appropriate to cover the costs expected, though the cost might be more. He testified that he had explored the possibility of having an engineer do a preliminary study to determine the exact costs involved but that the lowest price he was quoted was \$1000.00. That cost was more than he could afford to pay.

14. Though AAA lacks a detailed engineering study of the exact costs which will be incurred to bring the system into compliance, the Commission finds that the DHEC listing of System deficiencies

and necessary upgrades gives us sufficient basis upon which to gauge the reasonableness of the \$35,000 figure established by Mr. Massey and Mr. Swearingen. The record shows that both men have substantial experience in the area of water service as well as an intimate knowledge of the System itself. As stated above, Mr. Swearingen testified that, though he had no per item cost listing, he had estimated the total cost on his own based on his knowledge of water systems and found the \$35,000 figure first advanced by Mr. Massey to be reasonable if not lower than the actual costs which should be incurred. Mr. Massey testified at the Perry Water System hearing, that the improvements were substantial and would be costly.

15. The Commission determines that, on the basis of the evidence in the record and the application of its own expertise, that this estimate is an adequate basis for the flat monthly rate proposed. Witness Swearingen testified this flat monthly rate is based on the total number of households on the system utilizing the system for the full year. Within five years AAA expects to be able to collect the funds necessary to both make the upgrades and continue the operation of the system.

16. The Commission, in applying principles of sound rate structure, must balance the interests of the Company -- the opportunity to make a profit or earn a return on its investment, while providing water service --- with the interest of those who must pay any approved rates and charges -- to receive adequate service at a fair and reasonable rate. It is well established that this Commission does not ensure through regulation that a utility will produce net revenues. Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679

(1923); Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944). As the Supreme Court noted in the Hope Natural Gas decision, supra., the utility "has no constitutional rights to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." However, employing fair and enlightened judgment and giving consideration to all relevant factors, the Commission should establish rates which will produce revenues "sufficient to assure confidence in the financial soundness of the utility and ...that are adequate under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield at 692-693.

17. The ratepayers of the Perry Water System have enjoyed a minimum rate structure for some time. However, the System is not now able to properly discharge its public duties. The System is not up to date and its water may not be safe to drink at all times if compliance measures are not met. Though the proposed fee represents a considerable increase from the previous charge, the Company has established that significant improvements are necessary in order for the system to continue operation. We find that these improvements will cost at least \$35,000 to implement. We have already established that it is in the public interest that the system continue operation; therefore, we find that the \$25.00 flat monthly rate is just and reasonable to allow the Applicant to collect the funds necessary to bring the system into compliance and to continue its operation in the interim period.

18. In light of the limited financial ability of a company the size of AAA to absorb the costs of performing preliminary engineering studies along with the costs of the actual work, and in

consideration of the impact on the customers in the Perry Development should the System be closed, the Commission will not require at this time the detailed, item by item cost analysis suggested by the Consumer Advocate. The testimony has established that the system must be upgraded in order to allow it to remain in operation. Without the fees which will be generated by the payment of the monthly charge, the Company will not have the funds to make the improvements in the system. AAA presently does not have the funds to perform a detailed study of the system which would establish line item costs for this upgrade. However, the amount established by both the DHEC official and by the Company herein as an estimate of the cost involved is sufficient to allow the Commission to approve the transfer of the System to AAA and approve the proposed rates and charges. Accordingly, the Consumer Advocate's motion that the Commission withhold a ruling on the establishment of rates and require the Company to first provide information substantiating and quantifying the costs necessary to bring the System into compliance with DHEC requirements, is denied.

19. The Reconnect Fee will be charged if a customer desires water service to be restored after it has been disconnected for non-payment or at the request of the customer. According to the testimony of Mr. Swearingen, the Reconnect Fee was set at \$150.00 because of the fact that between 5 and 15 of the customers in the service area are seasonal customers, that is they have their water service turned off in the winter months and restored in the summer months. Mr. Swearingen testified that though the actual cost for performing a reconnect is at least \$75.00 without taking into consideration office time and several other costs, when customers desert the System for months out of the year the Company's revenues

will not cover system expenses unless the rates and/or policies take this phenomenon into consideration. A Reconnect Fee of \$150.00 should discourage such part-time resident usage where the Company's facilities are available and ready for use year round. We have approved such Reconnect Fees in at least two other cases, Docket Nos. 89-610-W/S (The Application of Carolina Water Service) and 89-601-W/S (The Application of Wild Dunes Utilities, Inc.). The Commission recognizes the need of the utility to maintain stable income and to apportion the costs of maintaining a water system among all those who benefit from its continued existence, even if they only use it for three or four months out of that year. The Commission finds both the Reconnect Fee rate and the policy behind it to be reasonable.

20. The Company, having induced the transfer of the System, now stands in the position of the previous owners, the Perrys. AAA shall therefore be required to comply with the DHEC Administrative Order No. 89-05-WS within a reasonable time in order to bring the System into compliance with DHEC requirements.

21. The Commission also finds that the Staff should monitor the actions of the Company toward bringing the System into compliance with DHEC requirements in order to assure that reasonable progress is made toward meeting that goal.

22. Having approved the transfer of the System to AAA, the Commission finds that the Application of Mr. James Perry for authority to abandon the System as well as the issues attendant to that Application, are rendered moot and that Docket 89-482-W should be closed.

IT IS THEREFORE ORDERED that:

1. The Application of AAA Utilities, Inc. requesting the

approval of the transfer of the Perry Water System to AAA Utilities, Inc. is hereby approved.

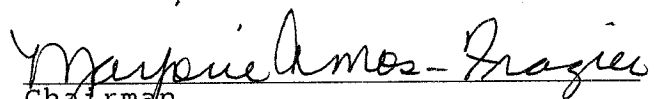
2. The Application of AAA for the establishment of a flat monthly rate of \$25.00 and a Reconnect Fee of \$150.00 is approved.

3. AAA shall, within a reasonable time, comply with the terms of the DHEC Administrative Order No. 89-05-WS to bring the system into compliance with DHEC requirements.


4. The Commission Staff shall monitor the progress of the Company in bringing the System into compliance with DHEC requirements to assure that reasonable progress is made toward that goal.

5. Docket 89-482-W, having been rendered moot by our finding in the instant Docket, is hereby closed.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)